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April 23, 2013

**VIA ECF AND FIRST CLASS MAIL**

Honorable Steven C. Mannion, U.S.M.J.  
 United States District Court for the District of New Jersey  
 Martin Luther King Jr. Bldg. & U.S. Courthouse  
 50 Walnut Street  
 Newark, New Jersey 07101

**Re: New Jersey Back Institute a/s/o N.J. v. Aetna Insurance, et al.**  
**Civil Action No. 12-5459 (ES/SCM)**

Dear Judge Mannion:

This firm represents Defendant Aetna Life Insurance Company ("Aetna") in the above-referenced matter. Pursuant to the Court's Order on February 25, 2013 (D.E. 13), Aetna and Plaintiff New Jersey Back Institute hereby jointly submit this letter detailing the status of the case in advance of the upcoming telephone conference scheduled on May 1, 2013.

**Procedural History of the Case**

Plaintiff filed its Complaint on June 15, 2012, in the Superior Court of New Jersey, Law Division, Bergen County, bearing Docket Number L-4481-12 against Aetna and the Greek Orthodox Archdiocese ("GOA"). The Complaint alleged that Aetna violated the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*, ("ERISA") because Aetna failed to pay Plaintiff, an out of network provider, the "reasonable and customary rate" for

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medically necessary services rendered to its patient, who had out-of-network benefits under the terms of an employee health benefits plan administered by Aetna.

On August 30, 2012, Aetna removed this action to this Court. Prior to removal, GOA was dismissed via stipulation of the parties. On September 20, 2012, Aetna filed its Answer, and Affirmative Defenses to Plaintiff's Complaint. (D.E. 5).

On December 10, 2012, the Court entered a Pretrial Scheduling Order which set forth the following: (1) Motions to amend pleadings or add new parties due by January 31, 2013; (2) R. 26 disclosures were by February 15, 2013; (3) Telephone conference to be held on February 25, 2013 at 11:00 a.m.; and (4) Fact discovery end date of March 29, 2013.

Per the Pretrial Scheduling Order, the parties had a telephone conference with the Court on February 25, 2012. The purpose of the call was for the Court to confirm if there were any open issues with respect to pleadings or discovery. Both parties indicated that there were no open issues. The parties agreed that discovery beyond the administrative record was unnecessary.

Following the telephone conference, the Court entered an Amended Scheduling Order setting forth in relevant part that: (1) Plaintiff's Rule 26 Disclosures were due by February 28, 2013; and (2) Fact discovery end date was March 29, 2013.

#### **Status of the Case**

As of the date of this letter, discovery has been closed for about a month and a half, and the parties have been unsuccessful in resolving this case by settlement. Aetna believes that the case is ripe for disposition by summary judgment motion.

#### **Aetna's Grounds for Summary Judgment**

Aetna's proposed motion for summary judgment seeks dismissal on the basis that that its benefit determination was not arbitrary and capricious. The employee benefit plan in question dictates that out of network benefits are to be reimbursed at 300% of the Medicare rate. In accordance with the plan term, Aetna reimbursed Plaintiff at the rate of 300% of the Medicare. Additionally, Aetna seeks dismissal because Plaintiff failed to fully exhaust the administrative remedies set forth in the plan.


#### **Proposed Summary Judgment Schedule**

Aetna respectfully proposes that the summary judgment motion be set for the June 17, 2013 motion date, making Aetna's initial brief due on May 24, 2013, Plaintiff's opposition due on June 3, 2013, and Aetna's reply due on June 10, 2013.

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The parties appreciate the Court's attention to these matters, and look forward to discussing them with the Court during the telephone status conference.

Respectfully submitted,



Patricia A. Lee

cc: Andrew Bronsnick, Esq. (via ECF and Email)